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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JOHN WESLEY WILLIAMS,

12 Plaintiff,

13 v.

14 M. GAMBOA, et al.,

15 Defendants.
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No. 1:21-cv-00155-NONE-EPG (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS

(Doc. Nos. 1, 10, 12)

17 John Williams (“plaintiff”) is a state prisoner proceeding *pro se* with this civil rights
18 action. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C.
19 § 636(b)(1)(B) and Local Rule 302.

20 On February 8, 2021, plaintiff filed a civil rights complaint against defendants. (Doc. No.
21 1.) On April 12, 2021, plaintiff provided the court with notice that he was electing to proceed
22 only on the claims found cognizable by the court’s April 1, 2021 screening order. (Doc No. 11.)
23 On April 14, 2021, the assigned magistrate judge therefore entered findings and
24 recommendations, recommending “that all claims and defendants be dismissed, except for
25 Plaintiff’s Eighth Amendment excessive force claim against defendant Oaks; Plaintiff’s Eighth
26 Amendment failure to protect claim against defendant Pascoe; Plaintiff’s Eighth Amendment
27 sexual assault claim against defendant Oaks; and Plaintiff’s Eighth Amendment claim for
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1 deliberate indifference to his serious medical needs against defendants Oaks, Pascoe, Riddle,
2 Beer, Garcia, and Cubos.” (Doc. No. 12 at 2–3) (footnote omitted.)

3 Plaintiff was provided an opportunity to file objections to the findings and
4 recommendations. On April 26, 2021, plaintiff filed his objections. (Doc. No. 15.) Specifically,
5 plaintiff objected to the recommendation that his excessive force claim against defendant Pascoe
6 be dismissed. *Id.*

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
8 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
9 court finds the findings and recommendations to be supported by the record and proper analysis.
10 Plaintiff’s objection to the recommended dismissal of the excessive force claim against defendant
11 Pascoe is without merit.

12 An excessive force claim requires that a defendant actually use force against the plaintiff.
13 *See Hudson v. McMillian*, 503 U.S. 1, 6–7 (1992). Here, plaintiff has not alleged that defendant
14 Pascoe made forceful contact with him; instead, plaintiff describes defendant Pascoe as a
15 “lookout” who failed to intervene when defendant Oaks unlawfully struck the plaintiff. As such,
16 plaintiff has alleged facts sufficient only for a failure to protect claim against defendant Pascoe.¹
17 Accordingly,

- 18 1. The findings and recommendations issued on April 14, 2021, (Doc. No. 12,) are
19 adopted in full;
- 20 2. All claims and defendants are dismissed,² except for plaintiff’s Eighth Amendment
21 excessive force claim against defendant Oaks; plaintiff’s Eighth Amendment
22 failure to protect claim against defendant Pascoe; plaintiff’s Eighth Amendment
23 sexual assault claim against defendant Oaks; and plaintiff’s Eighth Amendment
24 claim for deliberate indifference to his serious medical needs against defendants

25 ¹ Plaintiff also objects to the dismissal of his failure to protect claim against defendant Pascoe,
26 but the magistrate judge did not recommend that this claim be dismissed. The court agrees that
27 the failure to protect claim against defendant Pascoe is sufficiently pled at this stage.

28 ² Plaintiff’s cover-up claim is dismissed without prejudice. All other claims that are being
dismissed are dismissed with prejudice.

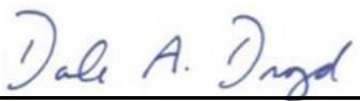
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Oaks, Pascoe, Riddle, Beer, Garcia, and Cubos; and

3. The Clerk of Court is directed to reflect the dismissal of defendant M. Gamboa from this action on the court's docket.

IT IS SO ORDERED.

Dated: July 13, 2021


UNITED STATES DISTRICT JUDGE